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REMARKS

Entry of the foregoing amendments is respectfully requested. Claims 13, 21, and 26 have been amended. Claim 25 has been canceled. Claims 13, 15-24, and 26-28 are currently pending in the application. Favorable reconsideration of allowance of this application is respectfully requested in light of the foregoing amendments and remarks.

1. Rejections Based on the Prior Art

a) Rejection of claims 13 and 15-28 in light of Morrison et al. U.S. Patent No. 6,433,068

In the Office Action, the Examiner has finally rejected claims 13 and 15-28 under 35 U.S.C. §102(e) as being anticipated by Morrison et al. U.S. Patent No. 6,433,068 (the '068 patent).

Applicant respectfully traverses the Examiner rejections to claims 13 and 15-28 based on the '068 patent. More specifically, in each of independent claims 13, 21, and 26, as amended with this response, the claimed product comprises: 1) a petroleum distillate; and 2) a thixotropic thickener including a triblock copolymer and a hydrocarbon oil. Further, the petroleum distillate and the hydrocarbon oil must be formed from different compounds.

In contrast, the '068 patent discloses a hydrocarbon gel that includes a hydrocarbon, a triblock copolymer, and one or more solids and/or non-hydrocarbon liquids suspended or dispersed therein. Thus, the '068 discloses a composition including only a single hydrocarbon component (the petroleum distillate) in conjunction with the triblock copolymer and the solids, and does not include a second hydrocarbon component that is different from the first hydrocarbon component as required by each of the independent claims of the present application. As a result, the subject matter of claims 13, 21, and 26, as well as claims 15-20 that depend from claim 13, claims 22-24 which depend from claim 21, and claims 27 and 28 that depend from claim 26 is neither shown nor described by the '068 patent. As such, claims 13 and 15-28 are allowable in light of the '068 patent and Applicant respectfully requests that the Examiner withdraw the rejections to claims 13 and 15-28.

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b) Rejection of claims 13 and 15-28 in light of Graveske U.S. Patent No. 6,350,810

In the Office Action, the Examiner has also rejected claims 13 and 15-22 under 35 U.S.C. §102(e) as being anticipated by Graveske U.S. Patent No. 6,350,810 (the '810 patent).

Applicant respectfully traverses the Examiner's rejection of claims 13 and 15-22 based on the '810 patent. More specifically, as stated previously, each of claims 13, 21, and 26 call for a non-aqueous petroleum distillate product consisting of a petroleum distillate and a thixotropic thickener formed from a triblock copolymer and a hydrocarbon oil that is formed from a different compound than the petroleum distillate. Thus, the product includes two separate and distinct hydrocarbon components, one that is present in the thixotropic thickener composition, and the petroleum distillate that is mixed with the thickener to form the non-aqueous distillate product.

In contrast, the '810 patent discloses a waterproofing composition that includes an organic solvent, which can be a hydrocarbon, a styrene polymer, which can be a triblock copolymer, and a hydrocarbon resin. Thus, the '810 patent includes only a single hydrocarbon distillate or oil component that can be considered to be either the petroleum distillate or the hydrocarbon oil, namely, the organic solvent. This is because, as stated in a previous response, the hydrocarbon resin is not, and is not analogous to a petroleum distillate or a hydrocarbon oil, such that the composition of the '810 patent includes only one hydrocarbon distillate or oil component, instead of the two different hydrocarbon distillate or oil compounds as required by claims 13, 21, and 28.

For these reasons, the subject matter of independent claims 13, 21, and 26, as well as of claims 15-20, 22-24, and 27-28, which depend from independent claims 13, 21, and 26, respectively, is not shown or described by the '810 patent. Therefore, claims 13 and 15-28 are allowable, and Applicant respectfully requests that the Examiner withdraw the rejections to claims 13 and 15-28 based on the '810 patent.

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2. Double Patenting Rejections

In the Office Action, the Examiner has also rejected claims 13 and 15-28 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of the '068 patent.

Applicant respectfully traverses the Examiner's rejections of claims 13 and 15-22 under the doctrine of obviousness-type double patenting in light of the '068 patent. More specifically, claims 13, 21, and 26 have been amended to specify that the petroleum distillate product includes the petroleum distillate and the thixotropic thickener, which are formed from different compounds.

In contrast, independent claim 1 of the '068 patent requires a gel composition including a hydrocarbon as an organic solvent, a polymeric gel component which can be a triblock copolymer, and a suspended or dispersed component formed of at least one hydrocarbon-insoluble solid. Thus, the '068 patent includes only one hydrocarbon component in claim 1, as opposed to the two different hydrocarbon components in the product of application claims 13, and 26, and especially application claim 21 which additionally consists essentially of these components, and cannot, therefore include the solids of the '068 patent. As a result, claims 13 and 15-28 cover a product that is clearly patentably distinct from claim 1 of the '068 patent, and Applicant respectfully requests that the Examiner withdraw the double patenting rejections to claims 13 and 15-28.

CONCLUSION

It is submitted that claims 13 and 15-28 are in compliance with 35 U.S.C. §102 and define patentable subject matter. A Notice of Allowance is therefore respectfully requested.

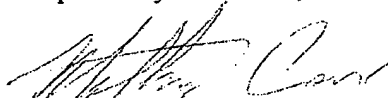
No fees are believed to be payable with this communication. However, should the Examiner consider any other fees to be payable in conjunction with this or any future communication, the Director is authorized to charge any fee or credit any overpayment to Deposit Account No. 50-1170.

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The Examiner is invited to contact the undersigned by telephone if it would help expedite the prosecution and allowance of this application.

Respectively submitted,



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